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[Report No. 109-288]

To exempt from certain requirements of the Atomic Energy Act of 1954 United States exports of nuclear materials, equipment, and technology to India, and to implement the United States Additional Protocol.

IN THE SENATE OF THE UNITED STATES

JULY 20, 2006

Mr. LUGAR, from the Committee on Foreign Relations, reported the following original bill; which was read twice and placed on the calendar

A BILL

To exempt from certain requirements of the Atomic Energy Act of 1954 United States exports of nuclear materials, equipment, and technology to India, and to implement the United States Additional Protocol.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **TITLE I—UNITED STATES-INDIA**
2 **PEACEFUL ATOMIC ENERGY**
3 **COOPERATION**

4 **SECTION 101. SHORT TITLE.**

5 This title may be cited as the “United States-India
6 Peaceful Atomic Energy Cooperation Act”.

7 **SEC. 102. SENSE OF CONGRESS.**

8 It is the sense of Congress that—

9 (1) strong bilateral relations with India are in
10 the national interest of the United States;

11 (2) the United States and India share common
12 democratic values and the potential for increasing
13 and sustained economic engagement;

14 (3) commerce in civil nuclear energy with India
15 by the United States and other countries has the po-
16 tential to benefit the people of all countries;

17 (4) such commerce also represents a significant
18 change in United States policy regarding commerce
19 with countries not parties to the Nuclear Non-Pro-
20 liferation Treaty, which remains the foundation of
21 the international non-proliferation regime;

22 (5) any commerce in civil nuclear energy with
23 India by the United States and other countries must
24 be achieved in a manner that minimizes the risk of
25 nuclear proliferation or regional arms races and

1 maximizes India's adherence to international non-
2 proliferation regimes, including, in particular, the
3 Guidelines of the Nuclear Suppliers Group (NSG);
4 and

5 (6) the United States should not seek to facili-
6 tate or encourage the continuation of nuclear ex-
7 ports to India by any other party if such exports are
8 terminated under United States law.

9 **SEC. 103. DECLARATION OF POLICY CONCERNING UNITED**
10 **STATES-INDIA PEACEFUL ATOMIC ENERGY**
11 **COOPERATION.**

12 It shall be the policy of the United States with respect
13 to any peaceful atomic energy cooperation between the
14 United States and India—

15 (1) to achieve as quickly as possible a cessation
16 of the production by India and Pakistan of fissile
17 materials for nuclear weapons and other nuclear ex-
18 plosive devices;

19 (2) to achieve as quickly as possible the Govern-
20 ment of India's adherence to, and cooperation in, the
21 full range of international non-proliferation regimes
22 and activities, including India's—

23 (A) full participation in the Proliferation
24 Security Initiative;

1 (B) formal commitment to the Statement
2 of Interdiction Principles;

3 (C) public announcement of its decision to
4 conform its export control laws, regulations,
5 and policies with the Australia Group and with
6 the Guidelines, Procedures, Criteria, and Con-
7 trols List of the Wassenaar Arrangement; and

8 (D) demonstration of satisfactory progress
9 toward implementing the decision described in
10 subparagraph (C);

11 (3) to ensure that India remains in full compli-
12 ance with its non-proliferation, arms control, and
13 disarmament agreements, obligations, and commit-
14 ments;

15 (4) to ensure that any safeguards agreement or
16 Additional Protocol thereto to which India is a party
17 with the International Atomic Energy Agency
18 (IAEA) can reliably safeguard any export or reex-
19 port to India of any nuclear materials and equip-
20 ment;

21 (5) to meet the requirements set forth in sub-
22 sections a.(1) and a.(3)–a.(9) of section 123 of the
23 Atomic Energy Act of 1954 (42 U.S.C. 2153);

24 (6) to act in a manner fully consistent with the
25 Guidelines for Nuclear Transfers and the Guidelines

1 for Transfers of Nuclear-Related Dual-Use Equip-
2 ment, Materials, Software and Related Technology
3 developed by the multilateral Nuclear Suppliers
4 Group and the rules and practices regarding NSG
5 decision-making;

6 (7) given the special sensitivity of equipment
7 and technologies related to the enrichment of ura-
8 nium, the reprocessing of spent nuclear fuel, and the
9 production of heavy water, to work with members of
10 the Nuclear Suppliers Group, individually and collec-
11 tively, to further restrict the transfers of such equip-
12 ment and technologies, including to India;

13 (8) to maintain the fullest possible international
14 support for, adherence to, and compliance with the
15 Nuclear Non-Proliferation Treaty; and

16 (9) that exports of nuclear fuel to India should
17 not contribute to, or in any way encourage, increases
18 in the production by India of fissile material for
19 non-civilian purposes.

20 **SEC. 104. WAIVERS FOR COOPERATION WITH INDIA.**

21 (a) **WAIVER AUTHORITY.**—If the President submits
22 a determination under section 105 to the appropriate con-
23 gressional committees, the President may—

24 (1) subject to subsection (b), exempt a proposed
25 agreement for cooperation with India arranged pur-

1 suant to section 123 of the Atomic Energy Act of
2 1954 (42 U.S.C. 2153) from the requirement of sub-
3 section a.(2) of such section;

4 (2) waive the application of section 128 of the
5 Atomic Energy Act of 1954 (42 U.S.C. 2157) with
6 respect to exports to India; and

7 (3) waive the application of any sanction with
8 respect to India under—

9 (A) section 129 a.(1)(D) of the Atomic En-
10 ergy Act of 1954 (42 U.S.C. 2158(a)(1)(D));
11 and

12 (B) section 129 of such Act (42 U.S.C.
13 2158) regarding any actions that occurred be-
14 fore July 18, 2005.

15 (b) JOINT RESOLUTION OF APPROVAL REQUIRE-
16 MENT.—An agreement for cooperation exempted by the
17 President pursuant to subsection (a)(1) shall be subject
18 to the second proviso in subsection d. of section 123 of
19 the Atomic Energy Act of 1954 (42 U.S.C. 2153(d)) ap-
20 plicable to agreements exempted by the President pursu-
21 ant to subsection (a) of such section.

1 **SEC. 105. DETERMINATION REGARDING UNITED STATES-**
2 **INDIA PEACEFUL ATOMIC ENERGY COOPERA-**
3 **TION.**

4 The determination referred to in section 104 is a
5 written determination by the President, which shall be ac-
6 companied by a report to the appropriate congressional
7 committees, that—

8 (1) India has provided to the IAEA and the
9 United States a credible plan to separate its civil nu-
10 clear facilities, materials, and programs from its
11 military facilities, materials, and programs;

12 (2) India has filed a complete declaration re-
13 garding its civil nuclear facilities and materials with
14 the IAEA;

15 (3) an agreement between India and the IAEA
16 requiring the application of safeguards in perpetuity
17 in accordance with IAEA standards, principles, and
18 practices to civil nuclear facilities, programs, and
19 materials described in paragraph (2) has entered
20 into force and the text of such agreement has been
21 made available to the appropriate congressional com-
22 mittees;

23 (4) India and the IAEA are making substantial
24 progress toward implementing an Additional Pro-
25 tocol;

1 (5) India is working with the United States to
2 conclude a multilateral treaty on the cessation of the
3 production of fissile materials for use in nuclear
4 weapons or other nuclear explosive devices;

5 (6) India is supporting international efforts to
6 prevent the spread of enrichment and reprocessing
7 technology to any state that does not already possess
8 full-scale, functioning enrichment or reprocessing
9 plants;

10 (7) India has secured nuclear and other sen-
11 sitive materials and technology through the applica-
12 tion of comprehensive export control legislation and
13 regulations, including through effective enforcement
14 actions, and through harmonization of its control
15 lists with, and adherence to, the guidelines of the
16 Missile Technology Control Regime and the Nuclear
17 Suppliers Group; and

18 (8) the Nuclear Suppliers Group has decided to
19 permit civil nuclear commerce with India pursuant
20 to a decision taken by the Nuclear Suppliers Group
21 that—

22 (A) was made by consensus; and

23 (B) does not permit nuclear commerce
24 with any non-nuclear weapon state other than
25 India that does not have IAEA safeguards on

1 all nuclear materials and all peaceful nuclear
2 activities within the territory of such state,
3 under its jurisdiction, or carried out under its
4 control anywhere.

5 **SEC. 106. PROHIBITION ON CERTAIN EXPORTS AND REEX-**
6 **PORTS.**

7 (a) SENSE OF CONGRESS ON LICENSING POLICY.—

8 It is the sense of Congress that it is in the interest of
9 the United States to permit the timely consideration of
10 applications for the export and reexport to India of any
11 nuclear materials and sensitive technology requiring au-
12 thorizations pursuant to parts 110 and 810 of title 10,
13 Code of Federal Regulations, to the extent that such ex-
14 ports and reexports are consistent with United States
15 laws, regulations, and policies in effect at the time such
16 export or reexport applications are to be considered.

17 (b) PROHIBITION.—

18 (1) IN GENERAL.—

19 (A) NUCLEAR REGULATORY COMMISS-
20 SION.—Except as provided in paragraph (2),
21 the Nuclear Regulatory Commission may not
22 authorize pursuant to part 110 of title 10, Code
23 of Federal Regulations, licenses for the export
24 or reexport to India of any equipment, mate-
25 rials, or technology related to the enrichment of

1 uranium, the reprocessing of spent nuclear fuel,
2 or the production of heavy water.

3 (B) SECRETARY OF ENERGY.—Except as
4 provided in paragraph (2), the Secretary of En-
5 ergy may not authorize pursuant to part 810 of
6 title 10, Code of Federal Regulations, licenses
7 for the export or reexport to India of any equip-
8 ment, materials, or technology related to the
9 enrichment of uranium, the reprocessing of
10 spent nuclear fuel, or the production of heavy
11 water.

12 (2) EXCEPTIONS.—Exports or reexports other-
13 wise prohibited under paragraph (1) may be ap-
14 proved if—

15 (A) the end user—

16 (i) is a multinational facility partici-
17 pating in an IAEA-approved program to
18 provide alternatives to national fuel cycle
19 capabilities; or

20 (ii) is a facility participating in, and
21 the export or reexport is associated with, a
22 bilateral or multinational program to de-
23 velop a proliferation-resistant fuel cycle;
24 and

1 (B) the President determines that the ex-
2 port or reexport will not improve India's ability
3 to produce nuclear weapons or fissile material
4 for military uses.

5 **SEC. 107. END-USE MONITORING PROGRAM.**

6 (a) IN GENERAL.—The President shall ensure that
7 all appropriate measures are taken to maintain account-
8 ability with respect to nuclear materials, equipment, and
9 technology sold, leased, exported, or reexported to India
10 and to ensure United States compliance with Article I of
11 the Nuclear Non-Proliferation Treaty.

12 (b) MEASURES.—The measures taken pursuant to
13 subsection (a) shall include the following:

14 (1) Obtaining and implementing assurances and
15 conditions pursuant to the export licensing authori-
16 ties of the Nuclear Regulatory Commission and the
17 Department of Commerce and the authorizing au-
18 thorities of the Department of Energy, including, as
19 appropriate, conditions regarding end-use moni-
20 toring.

21 (2) A detailed system of reporting and account-
22 ing for technology transfers, including any retrans-
23 fers in India, authorized by the Department of En-
24 ergy pursuant to section 57 b. of the Atomic Energy

1 Act of 1954 (42 U.S.C. 2077(b)). Such system shall
2 be capable of providing assurances that—

3 (A) the identified recipients of the nuclear
4 technology are authorized to receive the nuclear
5 technology;

6 (B) the nuclear technology identified for
7 transfer will be used only for peaceful safe-
8 guarded nuclear activities and will not be used
9 for any military or nuclear explosive purpose;
10 and

11 (C) the nuclear technology identified for
12 transfer will not be retransferred without the
13 prior consent of the United States, and facili-
14 ties, equipment, or materials derived through
15 the use of transferred technology will not be
16 transferred without the prior consent of the
17 United States.

18 (3) In the event the IAEA is unable to imple-
19 ment safeguards as required by an agreement be-
20 tween the United States and India arranged pursu-
21 ant to section 123 of the Atomic Energy Act of
22 1954 (42 U.S.C. 2153), arrangements that conform
23 with IAEA safeguards standards, principles, and
24 practices that provide assurances equivalent to that

1 intended to be secured by the system they replace,
2 including—

3 (A) review in a timely fashion of the design
4 of any equipment transferred pursuant to the
5 agreement for cooperation, or of any facility
6 that is to use, fabricate, process, or store any
7 material so transferred or any special nuclear
8 material used in or produced through the use of
9 such material and equipment;

10 (B) maintenance and disclosure of records
11 and of relevant reports for the purpose of as-
12 sisting in ensuring accountability for material
13 transferred pursuant to the agreement and any
14 source or special nuclear material used in or
15 produced through the use of any material and
16 equipment so transferred; and

17 (C) access to places and data necessary to
18 account for the material referred to in subpara-
19 graph (B) and to inspect any equipment or fa-
20 cility referred to in subparagraph (A).

21 (c) IMPLEMENTATION.—The measures described in
22 subsection (b) shall be implemented to provide reasonable
23 assurances that the recipient is complying with the rel-
24 evant requirements, terms, and conditions of any licenses
25 issued by the United States regarding such exports, in-

1 cluding those relating to the use, retransfer, safe handling,
2 secure transit, and storage of such exports.

3 **SEC. 108. IMPLEMENTATION AND COMPLIANCE.**

4 (a) INFORMATION ON NUCLEAR ACTIVITIES OF
5 INDIA.—The President shall keep the appropriate con-
6 gressional committees fully and currently informed of the
7 facts and implications of any significant nuclear activities
8 of India, including—

9 (1) any material non-compliance on the part of
10 the Government of India with—

11 (A) the non-proliferation commitments un-
12 dertaken in the Joint Statement of July 18,
13 2005, between the President of the United
14 States and the Prime Minister of India;

15 (B) the separation plan presented in the
16 national parliament of India on March 7, 2006,
17 and in greater detail on May 11, 2006;

18 (C) a safeguards agreement between the
19 Government of India and the IAEA;

20 (D) an Additional Protocol between the
21 Government of India and the IAEA;

22 (E) a peaceful nuclear cooperation agree-
23 ment between the Government of India and the
24 United States Government pursuant to section
25 123 of the Atomic Energy Act of 1954 (42

1 U.S.C. 2153) or any subsequent arrangement
2 under section 131 of such Act (42 U.S.C.
3 2160);

4 (F) the terms and conditions of any ap-
5 proved licenses; and

6 (G) United States laws and regulations re-
7 garding the export or reexport of nuclear mate-
8 rial or dual-use material, equipment, or tech-
9 nology;

10 (2) the construction of a nuclear facility in
11 India after the date of the enactment of this Act;

12 (3) significant changes in the production by
13 India of nuclear weapons or in the types or amounts
14 of fissile material produced; and

15 (4) changes in the purpose or operational status
16 of any unsafeguarded nuclear fuel cycle activities in
17 India.

18 (b) IMPLEMENTATION AND COMPLIANCE REPORT.—

19 Not later than 180 days after the date on which an agree-
20 ment between the Government of India and the United
21 States Government pursuant to section 123 of the Atomic
22 Energy Act of 1954 (42 U.S.C. 2153) enters into force,
23 and annually thereafter, the President shall submit to the
24 appropriate congressional committees a report including—

1 (1) a description of any additional nuclear fa-
2 cilities and nuclear materials that the Government of
3 India has placed or intends to place under IAEA
4 safeguards;

5 (2) a comprehensive listing of—

6 (A) all licenses that have been approved by
7 the Nuclear Regulatory Commission and the
8 Secretary of Energy for exports and reexports
9 to India under parts 110 and 810 of title 10,
10 Code of Federal Regulations;

11 (B) any licenses approved by the Depart-
12 ment of Commerce for the export or reexport to
13 India of commodities, related technology, and
14 software which are controlled for nuclear non-
15 proliferation reasons on the Nuclear Referral
16 List of the Commerce Control List maintained
17 under part 774 of title 15, Code of Federal
18 Regulations;

19 (C) any other United States authorizations
20 for the export or reexport to India of nuclear
21 materials and equipment; and

22 (D) with respect to each such license or
23 other form of authorization described in sub-
24 paragraphs (A), (B), and (C)—

1 (i) the number or other identifying in-
2 formation of each license or authorization;

3 (ii) the name or names of the author-
4 ized end user or end users;

5 (iii) the name of the site, facility, or
6 location in India to which the export or re-
7 export was made;

8 (iv) the terms and conditions included
9 on such licenses and authorizations;

10 (v) any post-shipment verification pro-
11 cedures that will be applied to such exports
12 or reexports; and

13 (vi) the term of validity of each such
14 license or authorization;

15 (3) any significant nuclear commerce between
16 India and other countries, including any such trade
17 that—

18 (A) does not comply with applicable guide-
19 lines or decisions of the Nuclear Suppliers
20 Group; or

21 (B) would not meet the standards applied
22 to exports or reexports of such material, equip-
23 ment, or technology of United States origin;

24 (4) either—

1 (A) a certification that India is in full com-
2 pliance with the commitments and obligations
3 contained in the agreements and other docu-
4 ments referenced in subparagraphs (A) through
5 (F) of subsection (a)(1); or

6 (B) if the President cannot make such cer-
7 tification, an identification and assessment of
8 all compliance issues arising with regard to the
9 adherence by India to its commitments and ob-
10 ligations, including—

11 (i) the steps the United States Gov-
12 ernment has taken to remedy or otherwise
13 respond to such compliance issues;

14 (ii) the responses of the Government
15 of India to such steps; and

16 (iii) an assessment of the implications
17 of any continued noncompliance, including
18 whether nuclear commerce with India, if
19 not already terminated under section 129
20 of the Atomic Energy Act of 1954 (42
21 U.S.C. 2158), remains in the national se-
22 curity interest of the United States;

23 (5) a detailed description of—

24 (A) United States efforts to promote na-
25 tional or regional progress by India and Paki-

1 stan in disclosing, securing, capping, and reduc-
2 ing their fissile material stockpiles, pending cre-
3 ation of a world-wide fissile material cut-off re-
4 gime, including the institution of a Fissile Ma-
5 terial Cut-off Treaty;

6 (B) the reactions of India and Pakistan to
7 such efforts; and

8 (C) assistance that the United States is
9 providing, or would be able to provide, to India
10 and Pakistan to promote the objectives in sub-
11 paragraph (A), consistent with its obligations
12 under international law and existing agree-
13 ments; and

14 (6) a detailed description of efforts and
15 progress made toward the achievement of India's—

16 (A) full participation in the Proliferation
17 Security Initiative;

18 (B) formal commitment to the Statement
19 of Interdiction Principles;

20 (C) public announcement of its decision to
21 conform its export control laws, regulations,
22 and policies with the Australia Group and with
23 the Guidelines, Procedures, Criteria, and Con-
24 trols List of the Wassenaar Arrangement; and

1 (D) demonstration of satisfactory progress
2 toward implementing the decision described in
3 subparagraph (C).

4 (c) SUBMITTAL WITH OTHER ANNUAL REPORTS.—

5 (1) REPORT ON PROLIFERATION PREVEN-
6 TION.—Each annual report submitted under sub-
7 section (b) after the initial report may be submitted
8 together with the annual report on proliferation pre-
9 vention required under section 601(a) of the Nuclear
10 Non-Proliferation Act of 1978 (22 U.S.C. 3281(a)).

11 (2) REPORT ON PROGRESS TOWARD REGIONAL
12 NON-PROLIFERATION.—The information required to
13 be submitted under subsection (b)(5) after the initial
14 report may be submitted together with the annual
15 report on progress toward regional non-proliferation
16 required under section 620F(c) of the Foreign As-
17 sistance Act of 1961 (22 U.S.C. 2376(c)).

18 (d) FORM.—Each report submitted under this section
19 shall be submitted in unclassified form but may contain
20 a classified annex.

21 **SEC. 109. UNITED STATES COMPLIANCE WITH ITS NUCLEAR**
22 **NON-PROLIFERATION TREATY OBLIGATIONS.**

23 This title shall not be deemed to constitute authority
24 for any action in violation of any obligation of the United
25 States under the Nuclear Non-Proliferation Treaty.

1 **SEC. 110. INOPERABILITY OF DETERMINATION AND WAIV-**
2 **ERS.**

3 A determination under section 105 and any waiver
4 under section 104 shall cease to be effective if the Presi-
5 dent determines that India has detonated a nuclear explo-
6 sive device after the date of the enactment of this Act.

7 **SEC. 111. MTCR ADHERENT STATUS.**

8 Congress finds that India is not an MTCR adherent
9 for the purposes of Section 73 of the Arms Export Control
10 Act (22 U.S.C. 2797b).

11 **SEC. 112. TECHNICAL AMENDMENT.**

12 Section 1112(c)(4) of the Arms Control and Non-
13 proliferation Act of 1999 (title XI of the Admiral James
14 W. Nance and Meg Donovan Foreign Relations Act, Fiscal
15 Years 2000 and 2001 (as enacted into law by section
16 1000(a)(7) of Public Law 106–113 and contained in ap-
17 pendix G of that Act; 113 Stat. 1501A–486)) is amend-
18 ed—

19 (1) in subparagraph (B), by striking “and”
20 after the semicolon at the end;

21 (2) by redesignating subparagraph (C) as sub-
22 paragraph (D); and

23 (3) by inserting after subparagraph (B) the fol-
24 lowing new subparagraph:

25 “(C) so much of the reports required under
26 section 108 of the United States-India Peaceful

1 Atomic Energy Cooperation Act as relates to
2 verification or compliance matters; and”.

3 **SEC. 113. DEFINITIONS.**

4 In this title:

5 (1) The term “Additional Protocol” means a
6 protocol additional to a safeguards agreement with
7 the IAEA, as negotiated between a country and the
8 IAEA based on a Model Additional Protocol as set
9 forth in IAEA information circular (INFCIRC) 540.

10 (2) The term “appropriate congressional com-
11 mittees” means the Committee on Foreign Relations
12 of the Senate and the Committee on International
13 Relations of the House of Representatives.

14 (3) The term “atomic energy” has the meaning
15 given the term in section 11 c. of the Atomic Energy
16 Act of 1954 (42 U.S.C. 2014(c)).

17 (4) The term “dual-use material, equipment, or
18 technology” means material, equipment, or tech-
19 nology that may be used in nuclear or non-nuclear
20 applications.

21 (5) The term “IAEA safeguards” has the
22 meaning given the term in section 830(3) of the Nu-
23 clear Proliferation Prevention Act of 1994 (22
24 U.S.C. 6305(3)).

1 (6) The term “nuclear materials and equip-
2 ment” means source material, special nuclear mate-
3 rial, production and utilization facilities and any
4 components thereof, and any other items or mate-
5 rials that are determined to have significance for nu-
6 clear explosive purposes pursuant to subsection 109
7 b. of the Atomic Energy Act of 1954 (42 U.S.C.
8 2139(b)).

9 (7) The term “Nuclear Non-Proliferation Trea-
10 ty” means the Treaty on the Non-Proliferation of
11 Nuclear Weapons, done at Washington, London, and
12 Moscow July 1, 1968, and entered into force March
13 5, 1970 (21 UST 483).

14 (8) The terms “nuclear weapon” and “nuclear
15 explosive device” mean any device designed to
16 produce an instantaneous release of an amount of
17 nuclear energy from special nuclear material that is
18 greater than the amount of energy that would be re-
19 leased from the detonation of one point of trinitro-
20 toluene (TNT).

21 (9) The terms “reprocessing” and “reprocess”
22 refer to the separation of nuclear materials from fis-
23 sion products in spent nuclear fuel.

24 (10) The term “sensitive nuclear technology”
25 has the meaning given the term in section 4(5) of

1 the Nuclear Nonproliferation Act of 1978 (22
2 U.S.C. 3203(5)).

3 (11) The term “source material” has the mean-
4 ing given the term in section 11 z. of the Atomic
5 Energy Act of 1954 (42 U.S.C. 2014(z)).

6 (12) The term “special nuclear material” has
7 the meaning given the term in section 11 aa. of the
8 Atomic Energy Act of 1954 (42 U.S.C. 2014(aa)).

9 (13) The term “unsafeguarded nuclear fuel-
10 cycle activity” means research on, or development,
11 design, manufacture, construction, operation, or
12 maintenance of—

13 (A) any existing or future reactor, critical
14 facility, conversion plant, fabrication plant, re-
15 processing plant, plant for the separation of iso-
16 topes of source or special fissionable material,
17 or separate storage installation with respect to
18 which there is no obligation to accept IAEA
19 safeguards at the relevant reactor, facility,
20 plant, or installation that contains source or
21 special fissionable material; or

22 (B) any existing or future heavy water pro-
23 duction plant with respect to which there is no
24 obligation to accept IAEA safeguards on any

1 nuclear material produced by or used in connec-
2 tion with any heavy water produced therefrom.

3 **TITLE II—UNITED STATES ADDI-**
4 **TIONAL PROTOCOL IMPLE-**
5 **MENTATION**

6 **SEC. 201. SHORT TITLE.**

7 This title may be cited as the “United States Addi-
8 tional Protocol Implementation Act”.

9 **SEC. 202. DEFINITIONS.**

10 In this title:

11 (1) **ADDITIONAL PROTOCOL.**—The term “Addi-
12 tional Protocol”, when used in the singular form,
13 means the Protocol Additional to the Agreement be-
14 tween the United States of America and the Inter-
15 national Atomic Energy Agency for the Application
16 of Safeguards in the United States of America, with
17 Annexes, signed at Vienna June 12, 1998 (T. Doc.
18 107–7).

19 (2) **APPROPRIATE CONGRESSIONAL COMMIT-**
20 **TEES.**—The term “appropriate congressional com-
21 mittees” means the Committee on Armed Services,
22 the Committee on Foreign Relations, and the Com-
23 mittee on Appropriations of the Senate and the
24 Committee on Armed Services, the Committee on

1 International Relations, and the Committee on Ap-
2 propriations of the House of Representatives.

3 (3) COMPLEMENTARY ACCESS.—The term
4 “complementary access” means the exercise of the
5 IAEA’s access rights as set forth in Articles 4 to 6
6 of the Additional Protocol.

7 (4) EXECUTIVE AGENCY.—The term “executive
8 agency” has the meaning given such term in section
9 105 of title 5, United States Code.

10 (5) FACILITY.—The term “facility” has the
11 meaning set forth in Article 18i. of the Additional
12 Protocol.

13 (6) IAEA.—The term “IAEA” means the
14 International Atomic Energy Agency.

15 (7) JUDGE OF THE UNITED STATES.—The term
16 “judge of the United States” means a United States
17 district judge, or a United States magistrate judge
18 appointed under the authority of chapter 43 of title
19 28, United States Code.

20 (8) LOCATION.—The term “location” means
21 any geographic point or area declared or identified
22 by the United States or specified by the Inter-
23 national Atomic Energy Agency.

24 (9) NUCLEAR NON-PROLIFERATION TREATY.—
25 The term “Nuclear Non-Proliferation Treaty”

1 means the Treaty on the Non-Proliferation of Nu-
2 clear Weapons, done at Washington, London, and
3 Moscow July 1, 1968, and entered into force March
4 5, 1970 (21 UST 483).

5 (10) NUCLEAR-WEAPON STATE PARTY AND
6 NON-NUCLEAR-WEAPON STATE PARTY.—The terms
7 “nuclear-weapon State Party” and “non-nuclear-
8 weapon State Party” have the meanings given such
9 terms in the Nuclear Non-Proliferation Treaty.

10 (11) PERSON.—The term “person”, except as
11 otherwise provided, means any individual, corpora-
12 tion, partnership, firm, association, trust, estate,
13 public or private institution, any State or any polit-
14 ical subdivision thereof, or any political entity within
15 a State, any foreign government or nation or any
16 agency, instrumentality or political subdivision of
17 any such government or nation, or other entity lo-
18 cated in the United States.

19 (12) SITE.—The term “site” has the meaning
20 set forth in Article 18b. of the Additional Protocol.

21 (13) UNITED STATES.—The term “United
22 States”, when used as a geographic reference, means
23 the several States of the United States, the District
24 of Columbia, and the commonwealths, territories,
25 and possessions of the United States and includes all

1 places under the jurisdiction or control of the United
2 States, including—

3 (A) the territorial sea and the overlying
4 airspace;

5 (B) any civil aircraft of the United States
6 or public aircraft, as such terms are defined in
7 paragraphs (17) and (41), respectively, of sec-
8 tion 40102(a) of title 49, United States Code;
9 and

10 (C) any vessel of the United States, as
11 such term is defined in section 3(b) of the Mar-
12 itime Drug Law Enforcement Act (46 U.S.C.
13 App. 1903(b)).

14 (14) WIDE-AREA ENVIRONMENTAL SAM-
15 PLING.—The term “wide-area environmental sam-
16 pling” has the meaning set forth in Article 18g. of
17 the Additional Protocol.

18 **SEC. 203. SEVERABILITY.**

19 If any provision of this title, or the application of
20 such provision to any person or circumstance, is held in-
21 valid, the remainder of this title, or the application of such
22 provision to persons or circumstances other than those as
23 to which it is held invalid, shall not be affected thereby.

1 **Subtitle A—General Provisions**

2 **SEC. 211. AUTHORITY.**

3 (a) **IN GENERAL.**—The President is authorized to
4 implement and carry out the provisions of this title and
5 the Additional Protocol and shall designate through Exec-
6 utive order which executive agency or agencies of the
7 United States, which may include but are not limited to
8 the Department of State, the Department of Defense, the
9 Department of Justice, the Department of Commerce, the
10 Department of Energy, and the Nuclear Regulatory Com-
11 mission, shall issue or amend and enforce regulations in
12 order to implement this title and the provisions of the Ad-
13 ditional Protocol.

14 (b) **INCLUDED AUTHORITY.**—For any executive agen-
15 cy designated under subsection (a) that does not currently
16 possess the authority to conduct site vulnerability assess-
17 ments and related activities, the authority provided in sub-
18 section (a) includes such authority.

19 (c) **EXCEPTION.**—The authority described in sub-
20 section (b) does not supersede or otherwise modify any
21 existing authority of any Federal department or agency
22 already having such authority.

1 **Subtitle B—Complementary Access**

2 **SEC. 221. REQUIREMENT FOR AUTHORITY TO CONDUCT**
3 **COMPLEMENTARY ACCESS.**

4 (a) PROHIBITION.—No complementary access to any
5 location in the United States shall take place pursuant to
6 the Additional Protocol without the authorization of the
7 United States Government in accordance with the require-
8 ments of this title.

9 (b) AUTHORITY.—

10 (1) IN GENERAL.—Complementary access to
11 any location in the United States subject to access
12 under the Additional Protocol is authorized in ac-
13 cordance with this title.

14 (2) UNITED STATES REPRESENTATIVES.—

15 (A) RESTRICTIONS.—In the event of com-
16plementary access to a privately owned or oper-
17ated location, no employee of the Environ-
18mental Protection Agency or of the Mine Safety
19and Health Administration or the Occupational
20Safety and Health Administration of the De-
21partment of Labor may participate in the ac-
22cess.

23 (B) NUMBER.—The number of designated
24 United States representatives accompanying

1 IAEA inspectors shall be kept to the minimum
2 necessary.

3 **SEC. 222. PROCEDURES FOR COMPLEMENTARY ACCESS.**

4 (a) IN GENERAL.—Each instance of complementary
5 access to a location in the United States under the Addi-
6 tional Protocol shall be conducted in accordance with this
7 subtitle.

8 (b) NOTICE.—

9 (1) IN GENERAL.—Complementary access re-
10 ferred to in subsection (a) may occur only upon the
11 issuance of an actual written notice by the United
12 States Government to the owner, operator, occupant,
13 or agent in charge of the location to be subject to
14 complementary access.

15 (2) TIME OF NOTIFICATION.—The notice under
16 paragraph (1) shall be submitted to such owner, op-
17 erator, occupant, or agent as soon as possible after
18 the United States Government has received notifica-
19 tion that the IAEA seeks complementary access. No-
20 tices may be posted prominently at the location if
21 the United States Government is unable to provide
22 actual written notice to such owner, operator, occu-
23 pant, or agent.

24 (3) CONTENT OF NOTICE.—

1 (A) IN GENERAL.—The notice required by
2 paragraph (1) shall specify—

3 (i) the purpose for the complementary
4 access;

5 (ii) the basis for the selection of the
6 facility, site, or other location for the com-
7plementary access sought;

8 (iii) the activities that will be carried
9 out during the complementary access;

10 (iv) the time and date that the com-
11plementary access is expected to begin, and
12the anticipated period covered by the com-
13plementary access; and

14 (v) the names and titles of the inspec-
15tors.

16 (4) SEPARATE NOTICES REQUIRED.—A sepa-
17rate notice shall be provided each time that com-
18plementary access is sought by the IAEA.

19 (c) CREDENTIALS.—The complementary access team
20 of the IAEA and representatives or designees of the
21 United States Government shall display appropriate iden-
22tifying credentials to the owner, operator, occupant, or
23agent in charge of the location before gaining entry in con-
24nection with complementary access.

25 (d) SCOPE.—

1 (1) IN GENERAL.—Except as provided in a war-
2 rant issued under section 223, and subject to the
3 United States Government’s rights under the Addi-
4 tional Protocol to limit complementary access, com-
5 plementary access to a location pursuant to this title
6 may extend to all activities specifically permitted for
7 such locations under Article 6 of the Additional Pro-
8 tocol.

9 (2) EXCEPTION.—Unless required by the Addi-
10 tional Protocol, no inspection under this title shall
11 extend to—

12 (A) financial data (other than production
13 data);

14 (B) sales and marketing data (other than
15 shipment data);

16 (C) pricing data;

17 (D) personnel data;

18 (E) patent data;

19 (F) data maintained for compliance with
20 environmental or occupational health and safety
21 regulations; or

22 (G) research data.

23 (e) ENVIRONMENT, HEALTH, SAFETY, AND SECUR-
24 ITY.—In carrying out their activities, members of the
25 IAEA complementary access team and representatives or

1 designees of the United States Government shall observe
2 applicable environmental, health, safety, and security reg-
3 ulations established at the location subject to complemen-
4 tary access, including those for protection of controlled en-
5 vironments within a facility and for personal safety.

6 **SEC. 223. CONSENTS, WARRANTS, AND COMPLEMENTARY**
7 **ACCESS.**

8 (a) IN GENERAL.—

9 (1) PROCEDURE.—

10 (A) CONSENT.—Except as provided in
11 paragraph (2), an appropriate official of the
12 United States Government shall seek or have
13 the consent of the owner, operator, occupant, or
14 agent in charge of a location prior to entering
15 that location in connection with complementary
16 access pursuant to sections 221 and 222. The
17 owner, operator, occupant, or agent in charge of
18 the location may withhold consent for any rea-
19 son or no reason.

20 (B) ADMINISTRATIVE SEARCH WAR-
21 RANT.—In the absence of consent, the United
22 States Government may seek an administrative
23 search warrant from a judge of the United
24 States under subsection (b). Proceedings re-
25 garding the issuance of an administrative

1 search warrant shall be conducted ex parte, un-
2 less otherwise requested by the United States
3 Government.

4 (2) EXPEDITED ACCESS.—For purposes of ob-
5 taining access to a location pursuant to Article
6 4b.(ii) of the Additional Protocol in order to satisfy
7 United States obligations under the Additional Pro-
8 tocol when notice of two hours or less is required,
9 the United States Government may gain entry to
10 such location in connection with complementary ac-
11 cess, to the extent such access is consistent with the
12 Fourth Amendment to the United States Constitu-
13 tion, without obtaining either a warrant or consent.

14 (b) ADMINISTRATIVE SEARCH WARRANTS FOR COM-
15 PLEMENTARY ACCESS.—

16 (1) OBTAINING ADMINISTRATIVE SEARCH WAR-
17 RANTS.—For complementary access conducted in the
18 United States pursuant to the Additional Protocol,
19 and for which the acquisition of a warrant is re-
20 quired, the United States Government shall first ob-
21 tain an administrative search warrant from a judge
22 of the United States. The United States Government
23 shall provide to such judge all appropriate informa-
24 tion regarding the basis for the selection of the facil-

1 ity, site, or other location to which complementary
2 access is sought.

3 (2) CONTENT OF AFFIDAVITS FOR ADMINISTRA-
4 TIVE SEARCH WARRANTS.—A judge of the United
5 States shall promptly issue an administrative search
6 warrant authorizing the requested complementary
7 access upon an affidavit submitted by the United
8 States Government—

9 (A) stating that the Additional Protocol is
10 in force;

11 (B) stating that the designated facility,
12 site, or other location is subject to complemen-
13 tary access under the Additional Protocol;

14 (C) stating that the purpose of the com-
15 plementary access is to verify the correctness
16 and completeness of information declared by
17 the United States Government pursuant to Ar-
18 ticle 2 of the Additional Protocol;

19 (D) stating that the requested complemen-
20 tary access is in accordance with Article 4 of
21 the Additional Protocol;

22 (E) containing assurances that the scope
23 of the IAEA's complementary access, as well as
24 what it may collect, shall be limited to the ac-

1 cess provided for in Article 6 of the Additional
2 Protocol;

3 (F) listing the items, documents, and areas
4 to be searched and seized;

5 (G) stating the earliest commencement and
6 the anticipated duration of the complementary
7 access period, as well as the expected times of
8 day during which such complementary access
9 will take place; and

10 (H) stating that the location to which
11 entry in connection with complementary access
12 is sought was selected either—

13 (i) because there is probable cause, on
14 the basis of specific evidence, to believe
15 that information required to be reported
16 regarding a location pursuant to regula-
17 tions promulgated under this title is incor-
18 rect or incomplete, and that the location to
19 be accessed contains evidence regarding
20 that violation; or

21 (ii) pursuant to a reasonable general
22 administrative plan based upon specific
23 neutral criteria.

24 (3) CONTENT OF WARRANTS.—A warrant
25 issued under paragraph (2) shall specify the same

1 matters required of an affidavit under that para-
2 graph. In addition, each warrant shall contain the
3 identities of the representatives of the IAEA on the
4 complementary access team and the identities of the
5 representatives or designees of the United States
6 Government required to display identifying creden-
7 tials under section 222(c).

8 **SEC. 224. PROHIBITED ACTS RELATING TO COMPLEMEN-**
9 **TARY ACCESS.**

10 It shall be unlawful for any person willfully to fail
11 or refuse to permit, or to disrupt, delay, or otherwise im-
12 pede, a complementary access authorized by this subtitle
13 or an entry in connection with such access.

14 **Subtitle C—Confidentiality of**
15 **Information**

16 **SEC. 231. PROTECTION OF CONFIDENTIALITY OF INFORMA-**
17 **TION.**

18 Information reported to, or otherwise acquired by, the
19 United States Government under this title or under the
20 Additional Protocol shall be exempt from disclosure under
21 sections 552 of title 5, United States Code.

22 **Subtitle D—Enforcement**

23 **SEC. 241. RECORDKEEPING VIOLATIONS.**

24 It shall be unlawful for any person willfully to fail
25 or refuse—

1 (1) to establish or maintain any record required
2 by any regulation prescribed under this title;

3 (2) to submit any report, notice, or other infor-
4 mation to the United States Government in accord-
5 ance with any regulation prescribed under this title;
6 or

7 (3) to permit access to or copying of any record
8 by the United States Government in accordance with
9 any regulation prescribed under this title.

10 **SEC. 242. PENALTIES.**

11 (a) CIVIL.—

12 (1) PENALTY AMOUNTS.—Any person that is
13 determined, in accordance with paragraph (2), to
14 have violated section 224 or section 241 shall be re-
15 quired by order to pay a civil penalty in an amount
16 not to exceed \$25,000 for each violation. For the
17 purposes of this paragraph, each day during which
18 a violation of section 224 continues shall constitute
19 a separate violation of that section.

20 (2) NOTICE AND HEARING.—

21 (A) IN GENERAL.—Before imposing a pen-
22 alty against a person under paragraph (1), the
23 head of an executive agency designated under
24 section 211(a) shall provide the person with no-
25 tice of the order. If, within 15 days after receiv-

1 ing the notice, the person requests a hearing,
2 the head of the designated executive agency
3 shall initiate a hearing on the violation.

4 (B) CONDUCT OF HEARING.—Any hearing
5 so requested shall be conducted before an ad-
6 ministrative judge. The hearing shall be con-
7 ducted in accordance with the requirements of
8 section 554 of title 5, United States Code. If no
9 hearing is so requested, the order imposed by
10 the head of the designated agency shall con-
11 stitute a final agency action.

12 (C) ISSUANCE OF ORDERS.—If the admin-
13 istrative judge determines, upon the preponder-
14 ance of the evidence received, that a person
15 named in the complaint has violated section
16 224 or section 241, the administrative judge
17 shall state his findings of fact and conclusions
18 of law, and issue and serve on such person an
19 order described in paragraph (1).

20 (D) FACTORS FOR DETERMINATION OF
21 PENALTY AMOUNTS.—In determining the
22 amount of any civil penalty, the administrative
23 judge or the head of the designated agency
24 shall take into account the nature, cir-
25 cumstances, extent, and gravity of the violation

1 or violations and, with respect to the violator,
2 the ability to pay, effect on ability to continue
3 to do business, any history of such violations,
4 the degree of culpability, the existence of an in-
5 ternal compliance program, and such other
6 matters as justice may require.

7 (E) CONTENT OF NOTICE.—For the pur-
8 poses of this paragraph, notice shall be in writ-
9 ing and shall be verifiably served upon the per-
10 son or persons subject to an order described in
11 paragraph (1). In addition, the notice shall—

12 (i) set forth the time, date, and spe-
13 cific nature of the alleged violation or vio-
14 lations; and

15 (ii) specify the administrative and ju-
16 dicial remedies available to the person or
17 persons subject to the order, including the
18 availability of a hearing and subsequent
19 appeal.

20 (3) ADMINISTRATIVE APPELLATE REVIEW.—

21 The decision and order of an administrative judge
22 shall be the recommended decision and order and
23 shall be referred to the head of the designated exec-
24 utive agency for final decision and order. If, within
25 60 days, the head of the designated executive agency

1 does not modify or vacate the decision and order, it
2 shall become a final agency action under this sub-
3 section.

4 (4) JUDICIAL REVIEW.—A person adversely af-
5 fected by a final order may, within 30 days after the
6 date the final order is issued, file a petition in the
7 Court of Appeals for the District of Columbia Cir-
8 cuit or in the Court of Appeals for the district in
9 which the violation occurred.

10 (5) ENFORCEMENT OF FINAL ORDERS.—

11 (A) IN GENERAL.—If a person fails to
12 comply with a final order issued against such
13 person under this subsection and—

14 (i) the person has not filed a petition
15 for judicial review of the order in accord-
16 ance with paragraph (4), or

17 (ii) a court in an action brought under
18 paragraph (4) has entered a final judg-
19 ment in favor of the designated executive
20 agency,

21 the head of the designated executive agency
22 shall commence a civil action to seek compliance
23 with the final order in any appropriate district
24 court of the United States.

1 (B) NO REVIEW.—In any such civil action,
2 the validity and appropriateness of the final
3 order shall not be subject to review.

4 (C) INTEREST.—Payment of penalties as-
5 sessed in a final order under this section shall
6 include interest at currently prevailing rates
7 calculated from the date of expiration of the 60-
8 day period referred to in paragraph (3) or the
9 date of such final order, as the case may be.

10 (b) CRIMINAL.—Any person who violates section 224
11 or section 241 may, in addition to or in lieu of any civil
12 penalty which may be imposed under subsection (a) for
13 such violation, be fined under title 18, United States Code,
14 imprisoned for not more than five years, or both.

15 **SEC. 243. SPECIFIC ENFORCEMENT.**

16 (a) JURISDICTION.—The district courts of the United
17 States shall have jurisdiction over civil actions brought by
18 the head of an executive agency designated under section
19 211(a)—

20 (1) to restrain any conduct in violation of sec-
21 tion 224 or section 241; or

22 (2) to compel the taking of any action required
23 by or under this title or the Additional Protocol.

24 (b) CIVIL ACTIONS.—

1 (1) IN GENERAL.—A civil action described in
2 subsection (a) may be brought—

3 (A) in the case of a civil action described
4 in paragraph (1) of such subsection, in the
5 United States district court for the judicial dis-
6 trict in which any act, omission, or transaction
7 constituting a violation of section 224 or section
8 241 occurred or in which the defendant is
9 found or transacts business; or

10 (B) in the case of a civil action described
11 in paragraph (2) of such subsection, in the
12 United States district court for the judicial dis-
13 trict in which the defendant is found or trans-
14 acts business.

15 (2) SERVICE OF PROCESS.—In any such civil
16 action, process shall be served on a defendant wher-
17 ever the defendant may reside or may be found.

18 **Subtitle E—Environmental** 19 **Sampling**

20 **SEC. 251. NOTIFICATION TO CONGRESS OF IAEA BOARD AP-** 21 **PROVAL OF WIDE-AREA ENVIRONMENTAL** 22 **SAMPLING.**

23 (a) IN GENERAL.—Not later than 30 days after the
24 date on which the Board of Governors of the IAEA ap-
25 proves wide-area environmental sampling for use as a safe-

1 guards verification tool, the President shall notify the ap-
2 propriate congressional committees.

3 (b) CONTENT.—The notification under subsection (a)
4 shall contain—

5 (1) a description of the specific methods and
6 sampling techniques approved by the Board of Gov-
7 ernors that are to be employed for purposes of wide-
8 area sampling; and

9 (2) a statement as to whether or not such sam-
10 pling may be conducted in the United States under
11 the Additional Protocol.

12 **SEC. 252. APPLICATION OF NATIONAL SECURITY EXCLU-**
13 **SION TO WIDE-AREA ENVIRONMENTAL SAM-**
14 **PLING.**

15 In accordance with Article 1(b) of the Additional Pro-
16 tocol, the United States shall not permit any wide-area
17 environmental sampling proposed by the IAEA to be con-
18 ducted at a specified location in the United States under
19 Article 9 of the Additional Protocol unless the President
20 has determined and reported to the appropriate congres-
21 sional committees that—

22 (1) the proposed use of wide-area environmental
23 sampling is necessary to increase the capability of
24 the IAEA to detect undeclared nuclear activities in
25 the territory of a non-nuclear-weapon State Party;

1 (2) the proposed use of wide-area environmental
2 sampling will not result in access by the IAEA to lo-
3 cations, activities, or information of direct national
4 security significance; and

5 (3) the United States—

6 (A) has been provided sufficient oppor-
7 tunity for consultation with the IAEA if the
8 IAEA has requested complementary access in-
9 volving wide-area environmental sampling; or

10 (B) has requested under Article 8 of the
11 Additional Protocol that the IAEA engage in
12 complementary access in the United States that
13 involves the use of wide-area environmental
14 sampling.

15 **SEC. 253. APPLICATION OF NATIONAL SECURITY EXCLU-**
16 **SION TO LOCATION-SPECIFIC ENVIRON-**
17 **MENTAL SAMPLING.**

18 In accordance with Article 1(b) of the Additional Pro-
19 tocol, the United States shall not permit any location-spe-
20 cific environmental sampling in the United States under
21 Article 5 of the Additional Protocol unless the President
22 has determined and reported to the appropriate congres-
23 sional committees that—

24 (1) the proposed use of location-specific envi-
25 ronmental sampling will not result in access by the

1 IAEA to locations, activities, or information of direct
2 national security significance; and

3 (2) with respect to the proposed use of environ-
4 mental sampling, the United States—

5 (A) has been provided sufficient oppor-
6 tunity for consultation with the IAEA if the
7 IAEA has requested complementary access in-
8 volving location-specific environmental sam-
9 pling; or

10 (B) has requested under Article 8 of the
11 Additional Protocol that the IAEA engage in
12 complementary access in the United States that
13 involves the use of location-specific environ-
14 mental sampling.

15 **Subtitle F—Authorization of** 16 **Appropriations**

17 **SEC. 261. AUTHORIZATION OF APPROPRIATIONS.**

18 There are authorized to be appropriated such sums
19 as may be necessary to carry out this title.

Calendar No. 527

109TH CONGRESS
2^D SESSION

S. 3709

[Report No. 109-288]

A BILL

To exempt from certain requirements of the Atomic Energy Act of 1954 United States exports of nuclear materials, equipment, and technology to India, and to implement the United States Additional Protocol.

JULY 20, 2006

Read twice and placed on the calendar